

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

CARL FOX, III

PLAINTIFF

V.

CIVIL ACTION NO. 3:11cv377-CWR-MTP

THE STATE OF MISSISSIPPI, ET AL.

DEFENDANTS

ORDER REGARDING SERVICE OF PROCESS

This matter is before the court *sua sponte* for case management purposes. Plaintiff filed this civil rights action on June 23, 2011. On September 8, 2011, the court entered an Order [6] denying Plaintiff's Motion [2] for leave to proceed *in forma pauperis*. The court received Plaintiff's filing fee on September 22, 2011. *See* Docket Entry dated 9/22/11.

On October 20, 2011, summonses were issued to the Defendants. *See* Summonses [10]. Plaintiff is reminded that it is his responsibility to properly serve Defendants with process under Fed. R. Civ. P. 4 within 120 days after the complaint is filed. *See* Fed. R. Civ. P. 4(c) (providing that the "plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service"); *see also* Fed. R. Civ. P. 4(m) (providing that if the plaintiff fails to serve the defendant with the complaint within 120 days after the complaint is filed, the court "must dismiss the action without prejudice against that defendant . . ."). Because Plaintiff is not proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915, the court and the U.S. Marshal's office have no obligation to assist Plaintiff with the service of process. *See* Fed. R. Civ. P. 4(c); L.U.Civ.R. 4(b) ("The United States Marshal does not serve process in civil actions except on behalf of the federal government, in actions proceeding in forma pauperis, on writs of seizure and executions of judgments, and when otherwise ordered by a federal court."); *see also* *Whiting*

v. Alvarado, No. 2:03cv53, 2004 WL 527793, at *1-2 (N.D. Tex. Mar. 17, 2004) (denying plaintiff's motion for service of process by U.S. Marshal where plaintiff was not proceeding *in forma pauperis*). Accordingly,

IT IS, THEREFORE, ORDERED:

1. That Plaintiff must properly serve the Defendants with the summons and complaint by January 19, 2012,¹ and must file the proof of service of the summons and complaint by the server's affidavit pursuant to Rule 4(l).
2. That Plaintiff's failure to properly serve the Defendants in accordance with Rule 4 may result in the dismissal of any unserved Defendant.
3. That it is the Plaintiff's responsibility to prosecute this case. Failure to advise this court of a change of address or failure to comply with any order of this court will be deemed as a purposeful delay and contumacious act by the Plaintiff and may result in the dismissal of this case.

SO ORDERED this the 24th day of October, 2011.

s/ Michael T. Parker

United States Magistrate Judge

¹Although Plaintiff's Complaint was filed on June 23, 2011, his Motion for Leave to Proceed In Forma Pauperis [2] was denied on September 8, 2011, and Plaintiff did not pay his filing fee until September 22, 2011. Weighing all doubts in Plaintiff's favor, the 120-day time limitation began to run on September 22, 2011, the date his filing fee was paid. *See Shabazz v. Franklin*, 380 F. Supp. 2d 793, 799 (N.D. Tex. 2005); *Ellis v. Principi*, 223 F.R.D. 446, 447-48 (S.D. Miss. 2004).